IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TONY SMITH, Plaintiff, v. E-BACKGROUNDCHECKS.COM, INC., Defendant.	CIVIL ACTION NO. 1:13-cv-02658-RGV

ORDER

Defendant E-backgroundchecks.com, Inc. ("BGC") has filed a motion *in limine* to exclude any evidence, testimony, or reference at trial to BGC's insurance coverage and to other lawsuits filed against BGC, and it also moves to exclude any discussion during the first phase of the bifurcated trial of BGC's finances or any other evidence that bears solely on determining an amount of punitive damages. [Doc. 68 at 1]. Plaintiff Tony Smith ("plaintiff") only opposes the motion with respect to excluding evidence of other lawsuits, as he does not intend to admit evidence relating to BGC's insurance coverage at trial, and he does not intend to admit evidence of BGC's net worth until the second phase of the bifurcated trial. [Doc. 69 at 2-3]. BGC has filed a reply in support of its motion, [Doc. 78], and for the reasons that follow, the Court **GRANTS** BGC's motion in its entirety.

Evidence of other lawsuits is generally considered to be inadmissible hearsay. In re Ethicon, Inc., Pelvic Repair Sys. Prods. Liab. Litig., Nos. 2:12–MD–02327, 2:12–cv–4301, 2014 WL 505234, at *5-6 (S.D. W.Va. Feb. 5, 2014) (citing Johnson v. Ford Motor Co., 988 F.2d 573, 579 (5th Cir.1993) (per curiam)); see also Steed v. EverHome Mortg. Co., 308 F. App'x 364, 369 n.2 (11th Cir. 2009) (per curiam) (unpublished) (excluding a complaint filed in a prior lawsuit against defendant as hearsay); Roberts v. Harnischfeger Corp., 901 F.2d 42, 44–45 (5th Cir. 1989) (affidavit summarizing copies of notices of pending litigation against the defendant properly excluded as hearsay); Amegy Bank Nat'l Ass'n v. DB Private Wealth Mortg., Ltd., No. 2:12–cv–243–FtM–38CM, 2014 WL 791505, at *2 (M.D. Fla. Feb. 24, 2014) (excluding any "references to allegations, petitions, complaints or claims against [defendant] in other suits" as hearsay); Abu Dhabi Commercial Bank v. Morgan Stanley & Co., No. 08 Civ. 7508(SAS), 2013 WL 1155420, at *7 (S.D.N.Y. Mar. 20, 2013) (excluding "[r]eferences to other lawsuits including their factual allegations and evidence"). Plaintiff contends that proof of five prior lawsuits filed against BGC within the previous five years involving claims for conduct that is substantially similar to that at issue in this case is admissible "to show notice or knowledge of defects in BGC's procedures for preparing criminal background reports which is probative to proving both the negligent and reckless nature of BGC's conduct and specifically permitted under Rule 404(b)(2)." [Doc. 69 at 2]. However, plaintiff has not explained how mere proof of prior lawsuits against BGC has any probative value, particularly since he has not contested BGC's contention that "in no other lawsuit has a court or jury ever found that BGC violated the FCRA." [Doc. 68 at 4]; see also John Hamatie, Monique Hamatie v. Louisville Ladder, Inc., No. 6:06–cv–817–Orl–18KRS, 2007 WL 7626033, at *1 (M.D. Fla. Oct. 24, 2007) (excluding evidence of three prior lawsuits against defendant where plaintiff had not shown there was sufficient similarity between the prior lawsuits and the present case for the court to find them admissible).

Even if plaintiff could demonstrate some probative value from allegations in other lawsuits, presenting evidence of these other cases would lead to a series of mini-trials that would likely confuse and mislead the jury from the task at hand of evaluating plaintiff's claims in this case and result in a waste of time and judicial resources. Moreover, the minimal value, if any, of such proof is substantially outweighed by the risk of unfair prejudice to BGC arising from the admission of evidence of allegations in other lawsuits filed against it. Rushing v. Wells Fargo Bank, N.A., No. 8:10–cv–1572–T–24–AEP, 2012 WL 3155790, at *1 (M.D. Fla. Aug. 3, 2012) (noting that generally, "evidence of other lawsuits is not normally relevant and not permitted"); see also Williams v. Asplundh Tree Expert Co., No.

3:05-cv-479-J-33MCR, 2006 WL 2868923, at *2 (M.D. Fla. Oct. 6, 2006). Accordingly, the evidence is also due to be excluded under Rule 403 of the Federal Rules of Evidence. Godwin v. Burkhalter, Civil Action No. 2:12cv164-WHA-CSC, 2013 WL 4544313, at *1 (M.D. Ala. Aug. 27, 2013); In re Ethicon, 2014 WL 505234, at *6.

SO ORDERED, this 4th day of June, 2015.

Russell G. Vineyard

RUSSELL G. VINEYARD
UNITED STATES MAGISTRATE JUDGE